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No. 451

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

GRADY D. ALLEN ..... Petitioner

Versus

THE STATE OF MISSISSIPPI ..... Respondent

STATEMENT OF JURISDICTION AND OTHER MATTERS REQUIRED BY RULE 12

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In compliance with Rule 12, the Petitioner files his Statement of Jurisdiction and other matters required.

STATUTORY PROVISIONS SUSTAINING JURISDICTION

Jurisdiction of the Supreme Court of the United States is invoked under Title 28, U. S. C., Sec. 1257(3), being 62 Stat. 929, Ch. 646.

FEDERAL QUESTION SOUGHT TO BE REVIEWED

Petitioner Allen was denied his constitutional rights and guaranties by a judgment and decree of the Chancery Court of Rankin County, Mississippi, and by the Chancellor who issued the citation finding Petitioner guilty of constructive criminal contempt and thereupon sentencing the Petitioner to serve thirty days in jail and pay a fine of five hundred dollars, all without trial by jury; and thereby the trial court and, by affirmance, the Supreme Court of Mississippi, has denied Petitioner equal protection of law and he has been deprived of his

liberty and property without due process of law, contrary to the Fourteenth Amendment to the Constitution of the United States and in contravention of Petitioner's rights as one charged with crime to a speedy and public trial by an impartial jury under the Sixth Amendment and contrary to Article 3, Paragraph 2, of the Constitution of the United States guaranteeing one charged with crime to the right of trial by jury.

Sacher vs. United States, 343 U. S. 1, 96 L. Ed. (Adv. No. 10) 437.

Tumey vs. Ohio, 273 U. S. 510, 47 S. Ct. 437, 71 L. Ed. 749, 50 A.L.R. 1243.

TIMELINESS OF APPEAL AND PETITION

The opinion of the Supreme Court of Mississippi is reported as *Higgins vs. State,* ..... Miss. ....., 56 So. (2) 61, decided January 14, 1952. The Suggestion of Error was overruled on February 25, 1952, and thereby the judgment of affirmance became final. The application for review here was granted by the Chief Justice of the Supreme Court of Mississippi on February 29, 1952, and supersedeas and appearance bonds filed the same date. Copy of Opinion is Exhibit "A" hereto, and copy of Order overruling Suggestion of Error is Exhibit "B" hereto. (T.R. 169 and 203).

STATEMENT OF THE NATURE OF THE CASE AND RULINGS OF COURTS BRINGING THE CASE WITHIN JURISDICTIONAL PROVISIONS ON WHICH RELIANCE IS MADE

This case was originally tried before the Chancellor of the Chancery Court of Rankin County, Mississippi, upon an information and citation for Petitioner to show cause why he should not be adjudged in contempt of court on a

constructive criminal contempt done out of the presence of the Chancery Court and the Chancellor.

There was a judgment and decree finding Petitioner guilty of a constructive criminal contempt with a five hundred dollar fine and thirty days jail sentence.

The Chancellor had entered an order appointing three members of the bar of that Court to investigate the action of Allen and others in filing of certain suits in the Chancery Court. These attorneys made the investigation and filed the information charging constructive contempt. To this information and the citation entered thereon, the Petitioner filed a motion to quash. This was overruled.

After a hearing before the same Chancellor who had ordered the institution of the proceedings, and without a jury, the Petitioner was adjudged guilty of and sentenced for constructive contempt. He appealed to the Supreme Court of Mississippi.

The Supreme Court of Mississippi affirmed the conviction and sentence and overruled the Suggestion of Error. See Exhibits "A" and "B" hereto attached.

In the Assignment of Error in the Supreme Court of Mississippi it was urged (T. R. 166):

"The Court erred in overruling the Appellant's Motion to Quash the Information of Contempt (Clerk's Record, pp 16 through 18) (T. R. 166), which refers to:

"14. A conviction under such an information would be violative of the 14th Amendment to the Constitution of the United States, and Article 3, Section 14 of the Constitution of the State of Mississippi, in that it would deprive him of his property and/or liberty without due process of law." (T. R. 17).

On Suggestion of Error it was again urged (T. R. 177):

"Thirdly, the conviction violates the due process clause of the Constitution of the United States. (T. R. 179).

* * * *

"A CONVICTION OF APPELLANT IN THIS CASE WOULD BE ARBITRARY AND A VIOLATION OF THE DUE PROCESS CLAUSES OF BOTH THE STATE AND FEDERAL CONSTITUTIONS.

"In appellant's Motion to Quash the Information filed in this case (R. 17), we said:

> " 'A conviction under such an information would be violative of the 14th Amendment to the Constitution of the United States, and Article 3, Section 14 of the Constitution of the State of Mississippi, ***.'

"With all respect and with the greatest of deference, and with no thought of the imputation of bad faith either upon the Trial Court or this Honorable Court, we submit that the record in this case is so wholly devoid of competent evidence that a conviction under it and the law would be arbitrary in the sense that it would result in the taking of the liberty of appellant without due process of law, both within the purview of the 14th Amendment to the Constitution of the United States, and Article 3, Section 14 of the Constitution of the State of Mississippi.

"Therefore, we earnestly urge this Honorable Court to re-evaluate both the evidence and the law in this Case in the light of our argument under each of the points herein." (T. R. 199).

The Court of last resort in the State of Mississippi by its decision affirming the action of the trial court denied substantial constitutional rights to Petitioner by denying him, as one under a charge of constructive criminal contempt, a fair, speedy and public trial by jury. It is urged by Petitioner that to force him to trial upon a constructive contempt charge, committed outside of the presence of the Court, before the same Judge who ordered him cited therefor, and his prosecution by attorneys appointed by the same Judge for the express purpose of drawing the bill of information against the Petitioner and to conduct the prosecution against him, all without benefit of trial by impartial jury, and to find him guilty and sentence him to pay a fine and be incarcerated in jail for thirty days, is an infringement upon the fundamental rights and a denial of constitutional guaranties of Petitioner.

GROUNDS AND DECISIONS SUSTAINING JURISDICTION AND DEMONSTRATING SUBSTANTIAL FEDERAL QUESTION. (T. R. 201)

1

In overruling the Suggestion of Error in this cause filed to the opinion of said Court under which the point was made that the conviction of the appellant in the Court below was in deprivation of his rights under the due process clause of the Constitution of the United States in accordance with the 14th Amendment thereof.

2

That the affirmance of the sentence imposed upon the appellant by the Chancery Court, for a constructive Criminal Contempt committed out of the presence of the Court, by the Supreme Court of Mississippi amounted to a deprivation of the right of trial by jury guaranteed

every citizen of the United States charged with crime under Article 3, Paragraph 2 of the Constitution of the United States.

3

That in affirming the opinion, judgment and sentence of the Chancery Court in finding the appellant guilty of constructive contempt, a criminal charge, the Supreme Court of Mississippi deprived the appellant of his rights under the Sixth Amendment to the Constitution of the United States in that he was denied the right to a speedy and public trial by an impartial jury. (T. R. 201)

The Supreme Court of Mississippi should have reversed and directed another Judge to hear the charges made of constructive criminal contempt before an impartial jury.

Gitlow vs. New York, 268 U. S. 652, 45 S. Ct. 625, 69 L. Ed. 1138.

Bridges vs. California, 314 U. S. 252, 62 S. Ct. 190, 86 L. Ed. 192.

Tumey vs. Ohio, 273, U. S. 510, 47 S. Ct. 437, 71 L. Ed. 749, 50 A.L.R. 1243.

Sacher vs. United States, 343 U. S. 1, 96 L. Ed. (Adv. No. 10) 437.

Compliance with Rule 12, par. 2 was had. (T. R. 224).

CONCLUSION

The writ should be granted because important and substantial Federal Constitutional questions were disposed of by the State Courts contrary to the rights of Petitioner and with denial of due process and equal protection guaranteed by the Constitution.

Upon hearing there should be the exercise of the supervisory power of this Honorable Court upon the issues thus presented and determined.

Respectfully Submitted,

FORREST B. JACKSON
COLIN L. STOCKDALE
Attorneys for Petitioner

By: Forrest B. Jackson
Of Counsel

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I certify service on the Attorney General of Mississippi, Counsel for Respondent.

This January 9, 1953.

Forrest B. Jackson
Of Counsel

EXHIBIT "A"

IN THE SUPREME COURT OF MISSISSIPPI

No. 38,266

(OPINION RENDERED JANUARY 14, 1952)

JOHN B. HIGGINS AND
GRADY D. ALLEN ..... DIVISION A

Versus

STATE OF MISSISSIPPI ..... ARRINGTON, C

The appellants, John B. Higgins and Grady D. Allen, were adjudged guilty of a constructive contempt of Court by the Chancery Court of Rankin County, Mississippi. Fine and imprisonment was imposed upon each of the appellants in the amount of $500.00 and thirty days in jail; $400.00 of the fine and the jail sentence upon appellant Higgins was suspended during good behavior.

The Attorney General has suggested the death of John B. Higgins pending this appeal and his appeal will be remanded to the files.

This contempt proceeding was the result of fifty-eight suits filed in the Chancery Court of Rankin County by John B. Higgins, at the instance of the appellant Allen, who employed Higgins for this purpose. The suits were filed under authority of Sections 2639 and 2640 of the Mississippi Code of 1942. Section 2639 is as follows: "Any person who may sell or give away malt, vinous or spirituous liquors unlawfully or who shall allow the same to be sold or given away at his place of business, for any purpose whatever, or shall knowingly permit any person

not interested in or connected with such business to keep and drink or give away at such place of business any vinous, malt or spirituous liquors, shall be subject to pay to the state, county, city , town or village, where the offense is committed, each, the sum of five hundred dollars; and the state, county, city, town or village, or any taxpayer of the state, county, city, town or village in the name thereof, or the state tax collector, or any sheriff within the county acting for them, may sue for and recover civilly, either jointly or separately, each said sum of five hundred dollars; and such civil suit may be commenced by attachment without bond."

Section 2640 gives the chancery court concurrent jurisdiction with courts of law to entertain suits under Section 2639. Thirty-two suits were filed on January 29, 1949, in the name of L. G. Melvin, a resident citizen and taxpayer of Rankin County, against various defendants, charging them with the sale of intoxicating liquors and praying for a decree against each defendant in the amount of $1,000.00, $500.00 for the State of Mississippi and $500.00 for Rankin County. On February 6, 1949, Melvin filed motions to dismiss the suits on the ground that he had not authorized the filing of said suits. Higgins advised Allen that before other suits could be filed, he would have to get someone who was a taxpayer in Rankin County in whose name they could file the suits. At this time, the appellant Grady Allen, who was a resident citizen of Hinds County, but who owned property in Rankin County, by deed conveyed to Claude L. Wiles on February 8, 1949, real estate in Rankin County. Wiles paid the taxes on this property and on February 24, 1949, twenty-six additional suits were filed in the name of Wiles as a taxpayer against various defendants. The evidence showed that Wiles was a resident citizen of Harrison County, Missis-

sippi. On March 2, 1949, Higgins filed a motion to dismiss the twenty-six suits after receiving a telegram from Wiles to do so.

On February 28, 1949, a hearing was held by the Chancery Court of Rankin County on the motion of Melvin to dismiss the thirty-two suits. At the conclusion of this hearing, the court entered an order appointing three members of the bar to investigate the filing of the above suits, in that the interested parties were probably guilty of contempt; that they attempted to impede, embarrass, obstruct, defeat and corrupt the administration of justice by certain acts and conduct on their part outside and beyond the presence of the court, and that information be filed for further action by the court. Pursuant to said order appointing the attorneys, information was filed on March 9, 1949, charging appellants Higgins, Allen, and others with contempt of court. The information is lengthy and will not be set out in full, but only the main charges as apply to appellant Allen; Allen employed Higgins to file the fifty-eight suits and that after Melvin denied authorizing Higgins to file suit in his name, the appellant Allen conveyed real estate to Wiles for the purpose of filing the twenty-six suits; "That the proceedings were not brought in good faith to recover the penalties sued for but they were willfully and corruptly instigated and filed through and under the influence of the said Grady D. Allen in an attempt and with the willfull and corrupt intention then and there to harass, embarrass and intimidate the Sheriff of Rankin County, Mississippi, and all other executive officers of said Rankin County, Mississippi;" and that Allen had constructed in Rankin County an expensive building at an estimated cost of $40,000.00, with the intention of using said building in activities which were in violation of the laws of the State

of Mississippi; and that the Sheriff of Rankin County, Mississippi, had denied to the appellant Allen the right to engage in such unlawful activities in said building; that the proceedings were not brought in good faith to protect the interest of Rankin County and the State of Mississippi, and concluded as follows:

> "That all these proceedings were tainted with corrupt purposes from their very inception and constitute a fraud upon the jurisdiction, powers and processes of this Court and were calculated and intended to impede, embarrass, obstruct, defeat and corrupt the administration of justice of this court and to belittle the dignity of this court and its lawful processes. That such willfull and corrupt acts and conduct on the part of the said L. G. Melvin, John B. Higgins, Grady D. Allen and Claud L. Wiles, constitute a contempt of this Court and they and each of them should be cited to appear before this Court at a time and place to be fixed by this Court for such hearing, then and there to show cause, if any they can, why they should not be adjudged in contempt of this Court and punished therefor."

The only pleading filed by the appellant Allen to the information was a motion to quash, which was overruled. Upon the trial of the case, the state introduced in evidence the entire fifty-eight suits, and the testimony of the witnesses Higgins, Allen and Melvin taken on the hearings on the motion to dismiss. Sheriff Mashburn of Rankin County testified with reference to the two-story brick building erected by Allen. Although he did not testify as to its value, he stated that there was a large bar on the first floor, the kind seen in liquor establishments, and that he visited the place on a number of occasions to observe if there were any violations of the law. The appellant Allen did not testify in his own behalf.

Higgins testified in his own behalf and admitted that he was employed by Allen to file the fifty-eight suits. With reference to a motion to substitute Allen as complainant in the place of Melvin, he testified as follows:

"Q . . . Now wasn't it with respect to some statement made by his honor after the conclusion of that trial, the hearing?

"A Well, the whole transaction there and all with reference to it, your honor, was the reason that I wasn't in favor of having anything more to do with it, just to be frank with you.

"Q Wasn't there, Mr. Higgins, some remark made by his honor as to this thing being a war between bootleggers?

"A Yes, sir, that was the reason we didn't file it. I want to make this statement, your honor, when I went into the transaction of these lawsuits I didn't know that there was any controversy up there between Mr. Allen or anybody else in Rankin County. I was absolutely innocent of the matter. I didn't know what motive Mr. Allen had, if he had any, to file the lawsuits and didn't go into that question with him. I will say this, if I had known then what I know now, I would never have filed it. I woudn't have had anything to do with it at all."

At the conclusion of the hearing, the lower court found that the fifty-eight suits were not filed in good faith, but for some private purpose of Allen and "that was an abuse of the Court and of its processes in instituting suits not for the purpose contemplated by the Statute but for the own private ends of Mr. Allen, and by doing such, he was obstructing and embarrassing the Court in its normal function and obstructing justice."

There are a number of errors assigned, but the only one argued is that the evidence is insufficient to support the guilt of appellant. We have carefully examined all of the evidence in this record and find that it is sufficient to support the guilt of appellant beyond all reasonable doubt. Constructive contempt was defined in the case of *Sullens v. State,* 191 Miss. 856, 4 So. 2d 356. There the Court said: "Constructive contempt has been defined as 'any act calculated to impede, embarrass, obstruct, defeat, or corrupt the administration of courts of justice, when the act is done beyond the presence of the court.' *Knox v. State,* 160 Miss. 494, 135 So. 206, 207; similar definitions appear in *Watson v. Williams,* 36 Miss. 331; *Shattuck v. State,* 51 Miss. 50, 24 Am. Rep. 624; *Durham v. State,* 97 Miss. 549, 52 So. 627; *Aarons v. State,* 105 Miss. 402, 62 So. 419, Ann. Cas. 1916E, 263; *Prine v. State,* 143 Miss. 231, 108 So. 716, 717; *Grewer v. State,* 176 Miss. 803, 170 So. 540; *City of Biloxi v. Lowery,* 179 Miss. 364, 175 So. 200; *Sammons v. State,* 181 Miss. 45, 178 So. 596." Compare *Melvin, et al v. State,* 210 Miss. 132, 48 So. 856.

> "Willfull abuse of legal process, such as instituting, or procuring the institution of, unauthorized or fictitious proceedings or suits, or obtaining court orders by fraud or deceit, provided the other party is prejudiced thereby, is contempt, where such acts obstruct or tend to impede the due administration of justice." 17 C.J.S., Contempt, Sec. 10. See also 12 Am. Jur., Contempt, Sec. 9.

We are of the opinion that from all of the evidence in this case, the fifty-eight suits were not filed in good faith, but for Allen's own purpose, which was to unlawfully operate his bar without interference from the law enforcement officers of Rankin County.

AFFIRMED.

Per Curiam. The above opinion is adopted as the opinion of the Court and for the reasons therein indicated, the judgment of the court below is affirmed.

EXHIBIT "B"

Monday, February 25th, 1952, Court Sitting:

John B. Higgins, et al
38,266 vs.
State.

This cause this day came on to be heard on the suggestion of error filed herein and this court having sufficiently examined and considered the same and being of the opinion that the same should be overruled doth order and adjudge that said suggestion of error be and the same is hereby overruled.